

**§ 97-40. Commutation and payment of compensation in absence of dependents; "next of kin" defined; commutation and distribution of compensation to partially dependent next of kin; payment in absence of both dependents and next of kin.**

Subject to the provisions of G.S. 97-38, if the deceased employee leaves neither whole nor partial dependents, then the compensation which would be payable under G.S. 97-38 to whole dependents shall be commuted to its present value and paid in a lump sum to the next of kin as herein defined. For purposes of this section and G.S. 97-38, "next of kin" shall include only child, father, mother, brother or sister of the deceased employee, including adult children or adult brothers or adult sisters of the deceased, but excluding a parent who has willfully abandoned the care and maintenance of his or her child and who has not resumed its care and maintenance at least one year prior to the first occurring of the majority or death of the child and continued its care and maintenance until its death or majority. For all such next of kin who are neither wholly nor partially dependent upon the deceased employee and who take under this section, the order of priority among them shall be governed by the general law applicable to the distribution of the personal estate of persons dying intestate. In the event of exclusion of a parent based on abandonment, the claim for compensation benefits shall be treated as though the abandoning parent had predeceased the employee. For all such next of kin who were also partially dependent on the deceased employee but who exercise the election provided for partial dependents by G.S. 97-38, the general law applicable to the distribution of the personal estate of persons dying intestate shall not apply and such person or persons upon the exercise of such election, shall be entitled, share and share alike, to the compensation provided in G.S. 97-38 for whole dependents commuted to its present value and paid in a lump sum.

If the deceased employee leaves neither whole dependents, partial dependents, nor next of kin as hereinabove defined, then no compensation shall be due or payable on account of the death of the deceased employee, except that the employer shall pay or cause to be paid the burial expenses of the deceased employee not exceeding ten thousand dollars (\$10,000) to the person or persons entitled thereto. (1929, c. 120, s. 40; 1931, c. 274, s. 5; c. 319; 1945, c. 766; 1953, c. 53, s. 2; c. 1135, s. 2; 1963, c. 604, s. 4; 1965, c. 419; 1967, c. 84, s. 5; 1971, c. 1179; 1981, c. 379; 1987, c. 729, s. 10; 2001-232, s. 3.1; 2011-287, s. 15.)